

RECEIVED

MAR - 8 1994

HUNTON & WILLIAMS

ATLANTA, GEORGIA
BRUSSELS, BELGIUM
FAIRFAX, VIRGINIA
KNOXVILLE, TENNESSEE
NEW YORK, NEW YORK

2000 PENNSYLVANIA AVENUE, N.W.
SUITE 9000
WASHINGTON, D.C. 20006
TELEPHONE (202) 955-1500
FAX (202) 778-2201

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
NORFOLK, VIRGINIA
RALEIGH, NORTH CAROLINA
RICHMOND, VIRGINIA
WARSAW, POLAND

FILE NO.: 425-1002
DIRECT DIAL: (202) 955-1515

March 8, 1994

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

94-11

Telephone and Data Systems, Inc.
File No. 10209-CL-P-715-B-88

Dear Mr. Caton:

Enclosed for filing are an original and six (6) copies of the Petition to Intervene of Portland Cellular Partnership in the above-captioned proceeding.

The three microfiche copies of this Petition required by 47 C.F.R. § 22.6(d) (1992) will be filed with the Commission as soon as they are available, which is expected to be within the next two days. If an extension or waiver of Commission rules is required to file the microfiche copies subsequent to the filing of the enclosed hard copies, we hereby request such extension or waiver.

Copies of the enclosed Petition to Intervene have been served on each of the parties designated on the attached Certificate of Service.

Thank you for your assistance in this matter.

Very truly yours,

Michael B. Barr

Enclosures

No. of Copies rec'd
List ABCDE

046

MAR - 8 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of:)	CC Docket No. 94-11
)	
TELEPHONE AND DATA)	File No. 10209-CL-P-715-B-88
SYSTEMS, INC.)	
)	
For Facilities in the)	
Domestic Public Cellular)	
Telecommunications Radio)	
Service on Frequency)	
Block B, in Market 715,)	
Wisconsin 8 (Vernon),)	
Rural Service Area)	

To: The Presiding Administrative Law Judge

PETITION TO INTERVENE

Portland Cellular Partnership ("Port Cell"), pursuant to Section 1.223(b) of the Commission's rules, 47 C.F.R. § 1.223(b), hereby petitions for leave to intervene in the above-captioned proceeding. Port Cell is a party to the Northeast Cellular Telephone Company L.P. proceeding (File No. 27488-CL-P-152-B-86) ("Northeast Cellular") in which Port Cell had in a petition to deny previously raised control issues similar to those raised against United States Cellular Corporation ("USCC") in the La Star Cellular Telephone Company^{1/} proceeding.

In its Memorandum Opinion and Order and Hearing Designation Order ("HDO")^{2/} in the above-captioned proceeding, the Commission designated for hearing issues regarding the

^{1/} La Star Cellular Telephone Co., 6 FCC Rcd. 6860 (ALJ 1991), aff'd, 7 FCC Rcd. 3762, n.3 (1992) ("La Star"), appeal pending sub nom. Telephone and Data Systems, Inc. v. FCC, Case Nos. 92-1291, 92-1294 (D.C. Cir.).

^{2/} FCC 94-29 (released February 1, 1994).

conduct of USCC in the La Star proceeding and USCC's qualifications to be a Commission licensee. The Commission in the HDO also invited other parties who had raised character qualifications issues against USCC and its parent, Telephone & Data Systems, Inc. in other proceedings to file petitions to intervene in this instant proceeding, pursuant to the Commission's rules. A notice of the HDO was published in the Federal Register on February 16, 1994 (59 Fed. Reg. 7673).

On December 20, 1991, following release of the Administrative Law Judge's Initial Decision in the La Star proceeding finding USCC to be the actual controlling partner in La Star (despite its holding only a 49% interest), Port Cell notified the Commission of the relevance of that decision to the Northeast Cellular proceeding. USCC is a 48.51% limited partner in Northeast Cellular Telephone Company, L.P. ("Northeast") and owns 49% of Maine State Cellular Telephone Company, which is the sole general partner in Northeast. On February 7, 1992, the Commission's staff asked Northeast to address several questions and provide detailed documentation concerning the party in real control of Northeast. The adequacy of Northeast's February 26, 1992 response to the staff was challenged by Port Cell on March 25, 1992, in a letter demonstrating Northeast's failure to overcome the prima facie case that Port Cell had raised in its petition to deny.

In June 1992, the Commission affirmed the La Star Initial Decision. At footnote 3 of the Commission decision, 7 FCC Rcd. 3762, n.3 (1992), the Commission specifically reserved to other proceedings in which USCC has ownership interests the resolution of the character

questions emanating from the finding that USCC was the real controlling partner in La Star. On August 12, 1992, in another case questioning USCC's control activities, USCC itself suggested that "it might . . . be appropriate to consider the findings and conclusions in the La Star case in . . . the Portland, Maine wireline cellular proceeding."^{3/} On July 2, 1993, Port Cell filed a petition for reconsideration in the Northeast proceeding in which it raised the La Star decision and the related footnote 3 character qualifications issue against USCC. That petition remains pending before the Commission.

As stated above, Port Cell has therefore raised the La Star character qualification issue in a pending Commission proceeding. In Northeast Cellular, Port Cell has participated in a lengthy Commission proceeding involving the issue of USCC control of an applicant. As a result, Port Cell is knowledgeable concerning USCC's pattern of activities in circumstances similar to those in La Star and believes that it can assist the Commission in the determination of the issues raised in the HDO. Port Cell therefore respectfully requests leave to intervene in this proceeding.

Respectfully submitted,

PORTLAND CELLULAR PARTNERSHIP

By: 

Michael B. Barr
Hunton & Williams
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 955-1515

^{3/} See USCC Opposition to Request for an Order to Show Cause at 35 and n.22 in File No. MSD-92-39.

RECEIVED

MAR - 8 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of:)	CC Docket No. 94-11
)	
TELEPHONE AND DATA)	File No. 10209-CL-P-715-B-88
SYSTEMS, INC.)	
)	
For Facilities in the)	
Domestic Public Cellular)	
Telecommunications Radio)	
Service on Frequency)	
Block B, in Market 715,)	
Wisconsin 8 (Vernon),)	
Rural Service Area)	

AFFIDAVIT OF WILLIAM KOWALCZYK

1. I am General Manager of Maine Cellular Telephone Company ("Maine Cellular"), the trade name under which Portland Cellular Partnership conducts business in Maine. Maine Cellular currently operates the wireline cellular system in the Portland, Maine NECMA under temporary FCC authority and has operated that system since 1988.

2. On December 20, 1991, Port Cell notified the Commission of the relevance of the Administrative Law Judge's findings concerning United States Cellular Corporation ("USCC") in the initial decision in the La Star proceeding to the Northeast Cellular Telephone Company, L.P. proceeding (File No. 27488-CL-P-152-B-86) in which Port Cell is a party.

3. On February 7, 1992, the Commission's staff asked Northeast to address several questions and provide detailed documentation in response to Port Cell's December 20, 1991

-2-

letter. On February 26, 1992, Northeast responded to that request. On March 25, 1992, Port Cell replied to Northeast's response.

4. On July 2, 1993, Port Cell filed a petition for reconsideration in the Northeast Cellular proceeding in which it raised the La Star decision and the related footnote 3 character qualifications issue against USCC. That petition remains pending before the Commission.

William Kowalczyk
William Kowalczyk

Sworn and Subscribed to this
3rd day of March, 1994

By: Mark F. Giegins
MARK F. GIEGINS
Notary Public: ATTORNEY-AT-LAW

CERTIFICATE OF SERVICE

I, Michael B. Barr, hereby certify that I have caused copies of the foregoing "Petition to Intervene" to be mailed, first class postage prepaid, or if so indicated, to be delivered by hand, to the following on this 8th day of March, 1994:

Joseph Webber, Esq.
Room 644
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

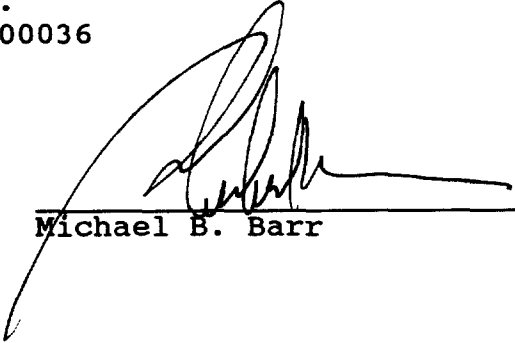
L. Andrew Tollin, Esq.
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Suite 600
Washington, D.C. 20006-5289

Alan Y. Naftalin, Esq.
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Kenneth E. Hardman, Esq.
Moir & Hardman
Suite 512
2000 L Street, N.W.
Washington, D.C. 20036

- * The Hon. Joseph Gonzalez
Federal Communications Commission
Room 221
2000 L Street, N.W.
Washington, D.C. 200036

- * Service by hand



Michael B. Barr